

REMARKS

Please note the fact that November 18, 2007 fell on a Sunday, ensures that this paper is timely filed within the two month period for response as of today, November 19, 2007, the next succeeding business day.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the following remarks.

Claims 1-43 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 23, and 43 are independent claims; the remaining claims are dependent claims. Claims 1-43 stand finally rejected. Claims 23-42 stand rejected under Section 101. Claims 1-10, 13-30, and 33-43 stand rejected under Section 102(b). Claims 11-12 and 31-32 stand rejected under Section 103. In response, Applicants submit this Amendment, amending claims 1, 22, 23, 42 and 43.

Applicants previously submitted remarks remain equally applicable here and are therefore incorporated by reference herein. Moreover, it should be noted that the amendments submitted herewith are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution, and that Applicants specifically state that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the

amended claim. Applicants respectfully reserve their right to pursue these and other claims in one or more continuation and/or divisional applications.

Section 101 Rejections

The Examiner has rejected Claims 23-42 under Section 101 as being directed to non-statutory subject matter. Of these claims, Claim 23 is an independent claim and the other claims are dependent claims. The Examiner characterizes Claim 23 as being directed to a computer program claimed as computer listings per se. Applicants respectfully traverse the rejection of the claims under Section 101, but have amended independent claim 23 to further emphasize that the claims are directed to statutory subject matter.

Applicants respectfully submit that the specification is more than sufficient to indicate to one of ordinary skill in the relevant art that the instantly claimed invention may be implemented on, e.g., a general purpose computer, and therefore would utilize a processor to implement the methods and the processor would be a component of the apparatus. *Specification*, page 16, line 17-page 17, line 4. Applicants have amended independent claim 23 to recite the utilization of a processor, thus claiming a tangible, physical element of the computer that permits the apparatus' functionality to be realized. Applicants respectfully submit that independent Claim 23 is clearly directed to statutory subject matter and that the claim amendment is supported by the specification and does not constitute new matter. Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections.

The above Remarks notwithstanding, the Applicants recognize and understand the focus of the Patent Office on ensuring that claims meet the statutory requirements of Section 101. To that end, should the Examiner, upon re-evaluation of the current rejection in light of the foregoing Remarks and claim amendments, deem that a rejection under 35 U.S.C. § 101 is still proper; Applicants and their undersigned representative kindly request the courtesy of a Telephone Interview so that an agreement may be reached as to how the claims might be amended in order to satisfy Section 101.

Section 102(b) Rejections Over Klemm et al.

Claims 1-10, 13-30, and 33-43 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 6,457,142 to Klemm et al (hereinafter “Klemm”).

Applicants respectfully request reconsideration and withdrawal of this rejection.

Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction.” *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

As best understood, the teachings of Klemm stand in stark contrast to the instantly claimed invention. Klemm teaches providing for a supervisor application program interface (API) for application faults, not operating system faults. *Klemm*, [0014]-[0018]. The teachings of Klemm require applications to be written against the API for fault recovery using an application wrapper. *Klemm*, Figure 1 and accompanying text. The

focus is on the Java Virtual Machine (JVM). Klemm, [0014]-[0018]. The teachings clearly focus on the JVM, software exceptions, threads, supervisor agents, and so on. All of these are application level components. The instantly claimed invention focuses on faults in the operating system itself without using a run time monitoring system.

Specification, page 8, lines 5-11; see also Claim 1. The instantly claimed invention executes at fault time; thus not requiring supervisor agents, exception handlers, and the like. *Specification*, page 8, lines 5-11. Indeed, the teachings of Klemm do not reference or contemplate the operating system or kernel. Thus, the teachings of Klemm clearly fall short of the instantly claimed invention.

Applicants have amended the independent claims to clarify that it is the operating system fault (as previously included in the preambles of all the independent claims and clearly indicated throughout the instant specification) that is the focus of the instant invention. The independent claims now recite, *inter alia*, “a method of providing automatic *recovery from operating system faults*, said method comprising the steps of: detecting an operating system fault; analyzing the operating system fault; determining a cause of the operating system fault; determining a solution; and applying a solution.” Claim 1, (emphasis added). Applicants respectfully submit that “system fault” clearly indicated, in light of the specification and the preamble of the original claims, that it is the operating system fault that is detected, analyzed, etc. The amendments are submitted to more clearly indicate that the operating system faults, i.e., the type of fault the instantly claimed invention is aimed at detecting, analyzing, and resolving automatically, are the subject matter of the claims. Applicants respectfully submit that Klemm clearly falls

short of the instantly claimed invention and therefore respectfully request reconsideration and withdrawal of these rejections.

Section 103(a) Rejections

Claims 11-12 and 31-32 stand rejected under 35 USC § 103(a) as obvious over Klemm in view of Chandiramani et al. (hereinafter “Chandiramani”). Applicants respectfully request reconsideration and withdrawal of these rejections.

Without specifically addressing the other deficiencies of this combination of references, Applicants note a Section 103(a) rejection requires that the combined cited references provide both the motivation to combine the references and an expectation of success. Not only is there no motivation to combine the references, no expectation of success, but actually combining the references would not produce the claimed invention. Thus, the claimed invention is patentable over the combined references and the state of the art.

In addition to other differences between Chandiramani and the instantly claimed invention, Chandiramani does not account for the deficiencies of Klemm. For example, Chandiramani teaches several components that are unnecessary and/or dissatisfied in the instantly claimed invention (e.g., an alternative mode of operation for fault analysis and performance tracking, using a virtual machine for fault handling, attempting to keep the given machine up in the alternative operating mode, and iterative patching/modification). Thus, Chandiramani, either alone or in combination with Klemm, is insufficient to render the instantly claimed invention unpatentable due to obviousness under 35 USC 103(a).

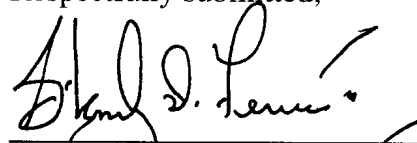
Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections.

Conclusion

In view of the foregoing, it is respectfully submitted that independent Claims 1, 23, and 43 fully distinguish over the applied art and are thus allowable. By virtue of dependence from Claims 1 and 23 it is thus also submitted that Claims 2-22 and 24-42 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including Claims 1-43, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Stanley D. Ference III
Registration No. 33,879

Customer No. 58127
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants